

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FEB 10 2005

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SPOKANE, WASHINGTON

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Attorneys for Plaintiff
IMPACT DIRECTORIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

IMPACT DIRECTORIES, a Washington
limited liability corporation,

Plaintiff,

v.

ALLTEL PUBLISHING CORPORATION,
an Ohio corporation; and ELLENSBURG
TELEPHONE COMPANY, a Washington
public utility,

Defendants.

CASE NO. **CV-05-3019-LRS**

**COMPLAINT FOR INJUNCTION
AND DAMAGES**

COMES NOW the Plaintiff, Impact Directories, a Washington limited liability
corporation, by and through its attorneys of record, J. Patrick Shirey and Robert M. Boggs of

COMPLAINT FOR INJUNCTION AND DAMAGES - 1
8594-15\lp\impact dir\alltel elltel\ COMPLAINT

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ORIGINAL

1 Lyon, Weigand, & Gustafson, P.S., and for causes of action against Defendants alleges as
2
3 follows:

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5 **JURISDICTION**

6 1. The Plaintiff, Impact Directories, is a Washington limited liability corporation
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8 with its principal place of business located in Yakima, Washington.
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10 2. The Defendant, ALLTEL Publishing Corporation, is an Ohio corporation with
11
12 its principal office located in Ohio.

13 3. The Defendant, Ellensburg Telephone Company, is a Washington public utility
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15 with its principal office located in Ellensburg, Washington.
16

17 4. The United States District Courts have original jurisdiction over this matter
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19 pursuant to 15 USCA §1121, 28 USCS §§ 1331 and 1332.
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21 **FACTUAL BASIS**

22 5. The Plaintiff, Impact Directories, publishes a commercial "yellow pages" type
23
24 telephone directory for use in the Ellensburg vicinity and in other vicinities within the State
25
26 of Washington. Listings and advertisement space is sold by the Plaintiff to both local and
27
28 out of the area businesses.
29

1 6. The Defendant, ALLTEL Publishing Corporation, publishes for the Ellensburg
2 Telephone Company a "yellow pages" type directory and competes with the Plaintiff for
3 sales of listings and advertising space.
4

5
6 7. On or about 2003 and 2004, the Defendants mailed letters to all businesses in
7 the Ellensburg area soliciting listings and advertisements for the 2004 and 2005 Ellensburg
8 Telephone Directory.
9

10
11
12 8. In the letters referred to in paragraphs 7 and 8, the Defendants made the
13 following statements:
14

15 "98% of residents who possess the Ellensburg Directory use it
16 over the competition" (2003)
17

18 "According to recent research, 100% of surveyed area
19 customers prefer the Ellensburg Directory." (2004)
20

21
22 **VIOLATION OF THE LANHAM ACT**
23

24 9. The statements quoted above in paragraph 8 were false and misleading, and,
25 therefore, a violation of Section 43(a) of the Lanham Act, codified as 15 USCS §1125(a).
26

27 10. The Plaintiff has been damaged and is likely to be damaged by the false and
28 misleading statements in that the Plaintiff has suffered and will likely suffer loss of sales and
29 reputation to local businesses and out of State businesses that advertise in the Ellensburg
30 area. Said damages are in excess of \$75,000.00.
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34

**VIOLATION OF THE
WASHINGTON STATE CONSUMER PROTECTION ACT**

11. The letter and statements referred to in paragraphs 7 and 8 constitute an unfair method of competition and are unfair and deceptive acts or practices in the conduct of trade or commerce and violate the Washington State Consumer Protection Act codified as RCW 19.86.

12. The Plaintiff has been damaged and is likely to be damaged by the unfair method of competition and the unfair and deceptive acts and practices in that the Plaintiff has suffered and will likely suffer loss of sales and reputation to local businesses and out of State businesses that advertise in the Ellensburg area. Said damages are in excess of \$75,000.00.

PRODUCT DISPARAGEMENT

13. The letters and statements referred to in paragraphs 7 and 8 were knowingly false or were made with reckless disregard for the truth and were intended to be and were harmful to the Plaintiff's business.

14. The Plaintiff has been damaged and is likely to be damaged by the knowingly false statements or statements made with a reckless disregard for the truth in that the Plaintiff has suffered and will likely suffer loss of sales and reputation to local and out of state businesses that advertise in the Ellensburg area.

1 **INTENTIONAL INTERFERENCE WITH BUSINESS CONTRACTS**
2 **AND EXPECTANCIES**

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4 15. The letters and statements referred to in paragraphs 7 and 8 were intended to
5
6 interfere and cause a breach of existing and anticipated business contracts and expectancies,
7
8 of which the Defendants had knowledge, by being false and misleading.

9 16. The Plaintiff has been damaged and is likely to be damaged by the knowingly
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11 false and misleading statements in that it will cause existing customers and anticipated
12
13 customers to avoid the use of the Plaintiff's directory.

14
15 **PRAYER FOR RELIEF**

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17 **WHEREFORE**, the Plaintiff prays that the U.S. District Court of Eastern
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19 Washington rule as follows:

20 1. That the Defendants be further enjoined from issuing such false and misleading
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22 statements;

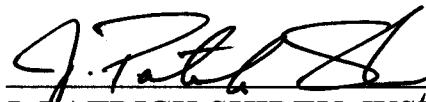
23
24 2. That the Defendants be required to mail to all of the businesses and individuals
25
26 that it previously sent such letters to, an acknowledgement of the false and misleading
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28 statements and a retraction of the same;

29 3. That the Defendants be further required to publish the same acknowledgement
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31 and retraction in the local Ellensburg newspaper of record;
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33
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1 4. That the Plaintiff be awarded a judgment against the Defendants for an amount
2
3 equal to the damages proven at trial; and

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5 5. That the Plaintiff be awarded its reasonable attorney fees and costs.

6 **DATED** this ²¹10 day of February, 2005.
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11 
12 J. PATRICK SHIREY, WSBA #29838
13 Lyon Weigand & Gustafson PS
14 Attorneys for Plaintiff

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16 
17 ROBERT M. BOGGS, WSBA#8664
18 Lyon Weigand & Gustafson PS
19 Attorneys for Plaintiff
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